United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: January 26, 1998

TO : William C. Schaub, Jr., Regional Director
Region 7

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: General Teamsters Union Local No. 406 177-2401-6700
International Brotherhood of Teamsters, 512-0117-0100
AFL-CIO 512-0125-1600
Case GR-7-CA-40224 512-5098
and 524-0117
International Brotherhood of Teamsters, 524-8301
AFL-CIO 536-2509-1800
Case GR-7-CA-40367 536-2581-6767-4600
536-2581-6767-7500
536-5050-6775

This case was submitted for Advice on whether: (1) Local 406 violated Sections 8(a)(1), (3) and (5) by issuing honorable withdrawal cards to all employee business agents because they were members of and/or represented by Teamsters Local 406 Business Agents Association ("the Association"); and (2) the International violated Sections 8(a)(1) and (3) by directing Local 406 to issue those withdrawal cards to its employee business agents.

FACTS

The Association has been certified as the exclusive collective bargaining representative for all business agents employed by Local 406, excluding those who are officers of the Local, since March 30, 1992. Since that time, the Association and Local 406 have negotiated several contracts, the most recent of which is in effect from March 20, 1997 to March 19, 2000. Under the International's Constitution and Bylaws, employee business agents are required to be dues paying members of their Employer Locals.[1] In tandem with that requirement, the most recent bargaining agreement of the Association/Local 406 also

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[1] See the Constitution, International Brotherhood of Teamsters, Adopted by the 24th International Convention, June 24-28, 1991, Article II, Jurisdiction, Membership and Eligibility of Office, Section 4.

requires business agents to maintain their membership in Local 406 and pay dues to the Local.[2] However, under the union-security clause in that same Association/Local 406 contract, business agents are also required to pay dues to the Association.

On or about August 20, 1997, Local 406 received a "Titan Electronic Mail" message directed to "All IBT Local Unions" from Ron Carey, International President. The message required all Teamsters local unions to issue honorable withdrawal cards to all employees and staff who are members of, or represented by, another labor organization. The explanation given by the International for its directive was to avoid the possibility of a conflict of interest which might arise if members of a Teamsters local union may have divided loyalty between the Teamsters local and a "non-Teamsters union," e.g., the Association. The International takes the position that this would constitute "'dual unionism' prohibited under the International Constitution and Local Union Bylaws." The Association filed the first of the instant two charges on September 18, 1997. By November 12, 1997, Local 406 had issued honorable withdrawal cards to all business agents represented by the Association who had not previously withdrawn from membership themselves.

The Association alleges that the International's directive is intended to discriminate against its members by depriving the business agents of the benefits of membership in good standing of the I.B.T., or, in the alternative, to coerce them to withdraw from membership in, and cease to be represented by, the Association. Under Local 406 bylaws, it appears that issuing withdrawal cards to Association members has three principal consequences arguably affecting the business agents' terms and conditions of employment. First, Association members would not have the right to attend meetings of the membership of Local 406, wherein matters affecting employees they represent are discussed, except as permitted by the Local 406 Executive Board, or to vote on issues concerning Local 406. Second, Association members would not be able to attend meetings and conventions of the International, or to

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[2] See Article I, Recognition, Section 5 of the current contract between Local 406 and the Association.

vote on issues put before the International's membership. Third, Association members would no longer be able to run for positions as officers of Local 406.[3] The wages, hours, and health and welfare and pension benefits of the business agents appear otherwise unaffected because they flow from the bargaining agreement between the Association and Local 406, and not from Teamsters membership per se.

ACTION

We conclude, in agreement with the Region, that the International and Local 406 violated Section 8(a)(1) by, respectively, directing issuance of and issuing honorable withdrawal cards to its business agents because they are represented by the Association. We further conclude that Local 406 violated Sections 8(a) (3) and (5) by changing Association members' terms and conditions of employment as a discriminatory and unilateral modification the parties' bargaining agreement.

Regarding the Section 8(a)(1) violations, the International's directive, and Local 406's compliance therewith, effectively dismissing its business agents from membership in the I.B.T., clearly discourages membership in the Association and interferes with the business agents' Section 7 right to select a collective bargaining representative.

In A. M. Steigerwald Co., 236 NLRB 1512 (1978), a credit union promulgated a bylaw restricting eligibility for membership in the credit union to employees of nonunion employers. There was no agency relationship between the credit union and any employer. The Board held that both the credit union and the employer violated Section 8(a)(1) by sending letters to employees of other employers, and threatening the loss of credit union privileges formerly enjoyed as terms and conditions of that employment. More importantly, the Board also held that the credit union violated Section 8(a)(1) by maintaining a discriminatory bylaw which discouraged the employees' membership in a

[3] See the Bylaws of General Teamsters Union, Local No. 406, Draft of February 17, 1997, Section 19, Membership, (C) Issuance of Withdrawal Cards, pp. 42-43.

labor union.[4]

In Matunuska Electric Association, Case 19-CA-25303, Advice Memorandum dated November 21, 1997, a non-profit electrical cooperative was governed by the Alaska Electric and Telephone Act which provided that certain persons receiving cooperative electrical service would be eligible for membership in the cooperative and may also serve on its elected Board of Directors. The cooperative nevertheless promulgated a bylaw which barred members of any union representing employees of the cooperative, and any dependents of such union members, from becoming or remaining a member of the cooperative's Board of Directors. The cooperative argued that its bylaw was intended to prevent the appearance of a conflict of interest which might be created if a Board member, who was also a union member, had to vote on a contract between the cooperative and the union. In response to the new bylaw, a Board of Directors member resigned his membership in the union which represented him in his employment as a cable splicer for a telephone company.

Advice concluded that the cooperative bylaw interfered with the Section 7 rights of the telephone company employee to belong to a union, in violation of Section 8(a)(1). We noted that there was no direct connection between the employee's employment with his telephone company employer and the employee's right to serve as an elected member of the Board of Directors of the cooperative. The cooperative bylaw nevertheless had a clear, albeit indirect, impact on the employee's employment situation. The employee who gave up his union membership in order to serve on the Board of Directors lost his right to serve on union committees and

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[4] See also Fabric Services, Inc., 190 NLRB 540 (1971), where a telephone company customer told an employee of the telephone company that he could not perform work at the customer's facility while wearing union insignia. The telephone company acceded to its customer's direction to its employee and also directed its employee to remove union insignia. The Board held that both the employer telephone company and the customer violated Section 8(a)(1) by this interference with the telephone company employee's right to wear union insignia. See also, Dews Construction Corp., 231 NLRB 182 (1977).

to have a voice in the negotiation of terms and conditions of his own employment.

The rationale for a violation in the above cases applies here to the International Union, viz., an entity's restriction against union-represented employees may unlawfully interfere with those employees' Section 7 rights, even though the restricting entity is not the immediate employer of those employees. Thus, here, as in Steigerwald, Fabric Services, and Matunuska, the International unlawfully directed Local 406 to discriminate against business agent employees because of their union-represented status, and Local 406's compliant discrimination was also unlawful.

The defense advanced by the International, presumption of conflicts resulting from "dual unionism," is inapplicable in this case. The International, in a letter to the Region dated November 14, 1997, responding to the instant charges, submits the following definitions of "dual unionism":

> "Secret or open efforts of union members to undermine the union and substitute another union as representative of employees. . ."[5]
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> "Dual unionism may. . . be used as a charge (usually a punishable offense) leveled at a union member or officer who seeks or accepts membership or position in a rival union, or otherwise attempts to undermine a union by helping its rival."[6]

We conclude that "dual unionism" is simply not present in this case. The International has not provided any evidence that the Association is a rival of either Local 406 or the International in their capacity to represent employees, nor any evidence that the Association has engaged in any

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[5] Citing: Labor Relations Expediter (BNA LRX) pp. 226-227 (1987).

[6] Roberts' Dictionary of Industrial Relations, pp. 160-161 (3d Ed. 1986).

attempt to undermine any I.B.T. entity in that capacity. Moreover, the Association's efforts to represent the business agents would not normally "undermine" either Local 406 or the International in their representative capacities, nor present even the appearance of any conflict of interest.

We also conclude that Local 406's implementation of the International's directive violated Section 8(a)(3) because it at least arguably affected the terms and conditions of employment of the business agents who were, and had been required to be, members of Local 406 pursuant to the Association's contract with Local 406. A necessary element to any 8(a)(3) violation is discrimination "in regard to hire or tenure of employment or any term or condition of employment." In this case, the issuance of honorable withdrawal cards was admittedly discriminatory against union membership and also impacted three aspects of the business agents' employment.

First, it is unquestionable that ability of Association members to attend meetings of the membership of Local 406 enabled the business agents to more effectively and efficaciously represent the Local and its members in dealing with employers of Local 406 members and the general public. Unions have long required their own employees to be Union members, and the Board has long recognized the business justification of this union employment requirement. For example, in Retail Store Employees Union, Local 428,[7] the Board stated:

> A union-employer, just as any other employer, may reasonably impose on its employees requirements reasonably related to the proper performance of their jobs. Here, for example, a field representative, in conducting the [union's] business, might be asked to explain how [the union] functions as a collective-bargaining representative, or why it is desirable for workers to organize. .... We deem it not unreasonable therefore, for a union-employer normally to require its employees to attend its

[7]Retail Store Employees Union, Local 428, AFL-CIO, 163 NLRB 431 (1967).

> meetings and fulfill certain other obligations to regular union membership.[8]

Business agents are the essential representatives of the local union. The ALJ in Retail Store Employees stated that the business agents' participation in all Local 406 meetings enabled them to "be at once sympathetic to [the union's] aims and objectives, fully conversant with its members needs and desires, and be properly counseled in the deliberations, plans, strategies and decisions of the Union, as undertaken and devised at membership meetings of the Union."[9] Accordingly, this activity encompassed a term or condition of the business agents' employment.

Second, business agents' attendance at International conventions enables them to understand the purposes of their employer, which in turn enhances their effectiveness in representing the Teamsters to employers and the public. In addition, attendance at conventions has been a traditional term and condition of employment, analogous to the expected provision of a Thanksgiving turkey[10] or a Christmas bonus.[11]

Third, the Association members' right to run for office in Local 406 is tantamount to the employee right to compete for promotion for supervisory or managerial positions with the employer.[12] By virtue of the experience and knowledge business agents have gained from representing the Teamsters to the general public, business agents arguably have a greater likelihood of winning such

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[8] Id. at 432-433 (emphasis added).

[9] Id. at 439.

[10] See Southern States Distribution, 264 NLRB 1, 3 (1982).

[11] See Harowe Servo Controls, Inc., 250 NLRB 958, 959 (1980).

[12] See, e.g., Lancaster Fairfield Community Hospital and Debbie A. Lefebure, 311 NLRB 401 (1993); United Exposition Service Company, Inc. v. NLRB, 300 NLRB 211 (1990), 945 F.2d 1057 (8th Cir. 1991).

elections.

In light of the above, Local 406's issuance of withdrawal cards also violated Section 8(a)(5) - 8(d) because it modified the parties' bargaining agreement in that same regard.

Accordingly, the Region should issue a Section 8(a)(1) complaint against the International, and a Section 8(a)(1), (3) and (5) complaint against Local 406, absent settlement, consistent with the above analysis.

B.J.K.